

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2014-346-WS

IN RE:)	
)	
Application of Daufuskie Island Utility)	MOTION FOR
Company, Inc. for Approval of an)	ORDER REGARDING
Adjustment for Water and Sewer Rates,)	BONDS
Terms and Conditions.)	
_____)	

NOW COMES THE APPLICANT, Daufuskie Island Utility Company, Inc. (“DIUC”), with the indicated consent of all parties, to request this Commission issue an Order as more fully set forth herein. In support, DIUC relies upon the record to date in this matter and also provides the following.

1. On June 9, 2015, DIUC filed the underlying Application seeking approval of a new schedule of rates and charges for water and sewer service. After a hearing on the Application, the Commission entered Order 2015-846 approving a settlement among certain parties and establishing rates according to the same. DIUC appealed the Order.
2. While the appeal was pending, DIUC elected to collect revenue as requested by its Application pursuant to S.C. Code § 58-5-240. The Commission approved DIUC’s plan to implement its Application’s rates finding:

Section 58-5-240 . . . allows the utility to impose its proposed rates under bond as a matter of right where the utility demonstrates that the surety and the bond are sufficient to ensure that the ratepayers will be reimbursed with interest for overcharges in the event the utility’s appeal is ultimately unsuccessful.

Commission Order 2016-156, March 1, 2016, at p.4. The Commission went on to find that DIUC’s “proposed surety and the bond in the amount of \$787,867, effective July 1, 2016,

for a period of one year are appropriate and are approved.” *Id.* at p.5.

3. When the appeal of Order 2015-846 continued beyond the one-year term of the bond issued pursuant to Order 2016-156, DIUC secured renewal of the existing bond and obtained a second bond in an amount sufficient to address the additional revenues to be collected. *See* Order 2017-402(A) dated June 30, 2017. There are two Orders of the Commission related to DIUC’s appeal bonds. They are Commission Order 2016-156 dated March 1, 2016, and Order 2017-402(A) dated June 30, 2017.

4. When DIUC was required to obtain the second bond in July of 2017:

DIUC was unable to obtain bond renewals and additional bonds on its own. The bonding company ultimately agreed to issue the bonds if SunTrust Bank provided a letter of credit (LOC) for the last bonds. SunTrust would not provide the LOC until DIUC was able to convince one of its owners [Mr. Terry Lee] to personally secure the SunTrust letter with the transfer of certain deposits.

Docket Entry #272662, Affidavit of John F. Guastella. Specifically, SunTrust sequestered deposits of \$600,000 belonging to Mr. Lee then issued the LOC. The personal funds used to secure the SunTrust LOC were not intended to be retrained after December 31, 2017, when the bonds expired.

5. On October 4, 2017, DIUC filed Applicant’s Proposal for Procedure Following Remand and Expedited Hearing. *See* DMS Entry #272433. In that Proposal, DIUC explained its position that the Supreme Court’s Order did not require or authorize any additional discovery for the matters to be addressed on remand. *Id.* DIUC cited the high costs of the original proceeding and appeal as well as the mounting costs of the rate case following the appeal. Intervenor’s responded by asserting their entitlement to discovery without any limitation. *Id.* Standing Hearing Officer David Butler issued Orders 2017-59-H and 2017-60-H finding that “since the Commission will hold a new hearing on all ... issues, the Commission’s discovery rules are clearly applicable.”

6. On October 16, 2017, DIUC filed its Motion to Reconsider Directives 2017-59-H and 2017-60-H explaining to the Commission that a decision on the Application was necessary prior to the conclusion of 2017, because the bonds this Commission ordered so that DIUC could collect its requested rates pending appeal would expire on December 31, 2017. *See* DMS Entry #272662. DIUC also submitted the Affidavit of John F. Guastella affirming that DIUC would not be “able to renew its existing bonds or obtain additional bonds for rates charged after December 31, 2017.” *See Id.* and *Exhibit C* thereto. The Affiant further testified that:

[B]ecause of the impossibility of obtaining bonds and the threat to DIUC if it not allowed to collect rates greater than those allowed by Order 2015-846, DIUC requires this matter be set for hearing as soon as possible so that a decision could be issued by the Commission prior to December 31, 2017.”

Id. DIUC also immediately submitted its prefiled testimony. *See* DMS Entries #272729, #272730, and #272731.

7. In response to the Motion to Reconsider and DIUC’s prompt filing of its prefiled testimony, on October 23, 2017, Standing Hearing Officer Butler issued Order 2017-61-H revising the schedule for the specific purpose of allowing a hearing and decision of this Commission prior to December 31, 2017.

DIUC’s counsel stated a preference for the pre-filing of testimony, hearing, and issuance of an Order in this case before the end of 2017, based on the questionable ability of the Company to obtain a continuing appeal bond during any pendency of the remand after the end of 2017, and also the expense of said bond. [...] The Company has now filed the affidavit of John F. Guastella and other materials, which support the difficulties of continuing its appeal bond after the end of 2017, and various financial consequences associated with that effort. [...] [T]his Standing Hearing Officer believes that any ruling must be on the side of caution, and that all discovery, pre-filing of testimony, and the hearing should be accomplished as soon as possible, so that the Commission may have the opportunity to rule on this remanded matter prior to the end of 2017.

Order 2017-61-H, DMS Entry #272829.

8. Based upon the plain language of Order 2017-64-H, the hearing schedule in this matter was set for the sole purpose of allowing the Commission to enter a ruling prior to December 31, 2017, because on that date the bonds in place pursuant to Orders 2016-156 and 2017-402(A) for collection of DIUC's applied-for rates would expire.
9. Pursuant to the Directive, a rehearing was held December 6-7, 2017. The parties provided proposed orders on December 15, 2017, so that the Commission would have them in advance of its scheduled December 20, 2017, meeting. *See* DMS Entries #273547, #273555, and #273556.
10. The Commission considered the rehearing during its December 20, 2017, meeting and pursuant to a motion by Commissioner Bockman, the Commission entered a Directive that requires DIUC to:
 - ... file a schedule with the Commission demonstrating that the rate design produces the revenue granted in the Order. These documents should be shared with the other parties in this case, who should verify that said rates are consistent with the provisions of this Order.
 - ... issue refunds, pursuant to S.C. Code Ann. Section 58-5-240, consisting of the difference between the amount allowed by this Order and the full amount originally requested by the Company, along with 12% interest. These amounts must be calculated from the date that the Company placed its originally requested rates into effect under bond.

Directive at 2.

11. Because the entire purpose for the expedited hearing in this matter was to allow a Commission decision prior to the December 31, 2017, expiration of the bonds, DIUC quickly complied with the Directive by filing a schedule with the Commission demonstrating that the rate design produces the revenue amount set forth by the Commission. *See* DMS Entry #273764, Letter with Schedules Submitted Pursuant to Commission Directive Dated December 20, 2017. The schedule was provided to all parties

with correspondence explaining that “pursuant to the Directive at ¶4, DIUC asks the parties to verify the rates set forth in the Schedules are consistent with the provisions of the Directive. In order for January’s billings, the parties are requested to provide their confirmations via email to the undersigned **prior to Noon on December 29, 2017.**” *Id.* (emphasis in original).

12. The new rates, including credit refunds, were billed on or about January 1, 2018 as had been contemplated by the scheduling of the rehearing. If new rates were not billed with the January billing for the last quarter of 2017, the 108.9% increase would have been billed again, but it would have been in violation of the requirement of a bond to assure refunds.
13. On January 31, 2018, the Commission issued its Order on Rehearing. The Order did not raise any objection to DIUC’s billing using the rates that had been filed with the Commission on December 22, 2017. DIUC filed a Petition for Rehearing, but neither ORS nor the POAs filed anything in response to the Commission Order on Rehearing.
14. DIUC has made refunds as required by the Commission and for which bonding had assured compliance. DIUC is now charging rates which are authorized by the Order on Rehearing. The current rates are not subject to refund or any requirement of a bond. As such, the LOC is no longer required and Mr. Lee’s funds are not necessary to secure the LOC. Understandably, Mr. Lee wishes to have access to his personal funds.
15. As a matter of formality, the surety has requested DIUC obtain this requested Order stating that DIUC is no longer collecting rates pursuant to the bonds issued per Commission Orders 2016-156 and 2017-402(A).

WHEREFORE, DIUC respectfully requests this Commission enter an order finding that DIUC is no longer collecting rates pursuant to the bonds issued per Commission Orders 2016-156 and 2017-402(A) and that the surety may therefore release the LOC thereby allowing SunTrust to release its interest in the personal funds of Mr. Lee that were used to secure the LOC for the bonds.

Respectfully submitted,

/s/ Thomas P. Gressette, Jr.

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March 7, 2018
Charleston, South Carolina

RULE 11 CERTIFICATION

Counsel for the movant affirms that prior to filing this Motion he communicated with opposing counsel and attempted in good faith to resolve the matter contained in the Motion.

CERTIFICATE OF SERVICE

This is to certify that on March 7, 2018, I caused to be served upon the counsel of record named below a copy of the foregoing MOTION FOR ORDER REGARDING BONDS by electronic mail, as indicated.

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